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No 80-1729

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM _____.

NICHOLAS MAZUR,

Petitioner,

vs.

COMMONWEALTH OF PENNSYLVANIA: _
-DEPARTMENT OF TRANSPORTATION,
_ PENNSYLVANIA CIVIL SERVICE COMMISSION,
_ GOVERNORS OFFICE OF ADMINISTRATION,

AND,
AMERICAN FEDERATION OF STATE, COUNTY, &
MUNICIPAL EMPLOYEES UNION (AFSCME),

Respondents.

PETITION FOR A WRIT OF CERTIORARI to the
United States Court of Appeals , for the Third Circuit

PETITIONER's BRIEF

NICHOLAS MAZUR, Petitioner/Pro se
819 N. 21st Street,
Allentown, Pa. 18104
215-433-1587

QUESTION PRESENTED

The questions to the Supreme Court is :

1. Does a Findings of Fact (Appendix "A") , submitted at a higher Court , have a definite influence of the higher Court's decision?

2.Does a Department of Justice Opinion (Appendix "A") have the same influnce, as that of any court of the land?

3. Does the "Findings of Facts- Judicial Opinion #76-3) have a definite conflict with the intent of the Arbitrary decision, dated (10/28/78), (Appendix"B") ?

4. Does the Petitioner have a right to a Trial by Jury, should a negative/adverse decision be made against him, when a trial by jury was denied to him throughout his litigation?

5.Would you say that conditions being varied,e.g...Judge in U.S. District Court, denied any court action because he did not want to be a surrogate attorney for the Petitioner, versus the briefs being reviewed on its Merit, in a higher Court, that the higher Court could refer to lower court in adjuging and affirming the lower Court's decision.Also, to be considered is the "Findings of Facts" submitted to the Higher Court.

No._____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM_____

PARTIES

CERTIFICATE OF SERVICE

I, NICHOLAS MAZUR, Pro se,Petitioner, hereby certify, that true and corect copies of the foregoing "Petition for Writ of Certiorari-Revised sections" has been forwarded, this date, by first class mail, pre-paid postage to:

RESPONDENTS:

Commonwealth of Penna, et al:

R.W. Cunliffe, Deputy to Chief Counsel
B. Raup. Asst. Atty. Gen'l.
Gov. R. Thornburgh
Office of Chief Counsel
T & S Bldg.,
Harrisburg, Pa. 17120

and
R. Kirschner, Esq.,
J. Walters, Esq.,
Kirschner, Walters & Willig
1500 Walnut Street,
Philadelphia, Pa. 19102

Signed by: Nicholas Mazur
Nicholas Mazur, Petitioner
Pro se
Date 4/10/81

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IN THE SUPREME COURT OF THE UNITED STATES
October Term_____
Case No._____

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No_____

IN THE SUPREME COURT OF THE

UNITED STATES
October Term_____

NICHOLAS MAZUR,
Petitioner,

vs.

COMMONWEALTH OF PENNSYLVANIA, Et al;
and,
AMERICAN FEDERATION OF STATE, COUNTY,
AND MUNICIPAL EMPLOYEES UNION(AFSCME),
Respondents.

PETITION FOR A WRIT OF CERIORARI TO THE
UNITED STATES COURT OF APPEALS , FOR THE THIRD CIRCUIT

CITATIONS

The opinion of the United States Court of Appeals, for the Third Circuit appears as "Nicholas Mazur v. Commonwealth of Pennsylvania, et al; and, American Federation of State, County & Municipal Employees Union(AFSCME) , Case No 80-1474.

Grounds for Jurisdiction

The opinion and judgment of the U.S. Court of Appeals ,third Circuit; affirming Petitioners judgments of Respondents actions were filed on April 17,1980.

Petitioner filed a timely Petition of Appeal and Findings of Facts. Jurisdiction of this Petition is conferred on this Court by 28 U.S.C. §1253; § 1254(2) & § 2103.

IN THE SUPREME COURT OF THE UNITED STATES
CASE No._____.
October Term_____.

JURISDICTION

Jurisdiction of the Court, is invoked under Title 28 U.S.C.A § 2101 (a) & (b), as amended May 24,1949, C139 §106, 63 Stat.104. and Civ.R.52 § and Civ. R 6(b). Also, 28 U.S.C.A § 1252; 1253,& 2282.

SPECIAL REQUEST AND JURISDICTION

Jurisdiction , of the Court is invoked, under Title 28 U.S.C. § 1915 & § 1916, and the Supreme Court Rule 46 and 47, providing for relief of court costs to a Veteran, seeking /suing for re-employment, which , in this case , is the Commonwealth of Penna.

CERTIFICATION OF SERVICE

Petitioner, Nicholas Mazur, Military Service No. 885660, served with the United States Marine Corps during the following periods: 8-5-43 to 6-28-46;* and 2-1-48 to 3-22-51.** The foregoing is true, and correct, to which I certify, and attach my Honorable Discharge records,hereto.

Signed by:
Nicholas Mazur
Nicholas Mazur,Petitioner/Prose.
819 N. 21st Street,
Allentown,Pa. 18104
215-433-1587
Date: April 2, 1981

Subscribed and sworn to before me
the 2 day of April 1981
Mamie M Schellhamer
Mamie M. Schellhamer
NOTARY PUBLIC
Allentown, Lehigh County, Pa.
My Commission Expires Jan. 7, 1983

* APPENDIX "C"
** APPENDIX "D"

STATEMENT OF SUBJECT MATTER

This is a "Petition for Writ of Certiorari" to the U.S. Court of Appeals , for the Third circuit for the U.S. Supreme Court, on their order dated March 30,1981(Appendix"E").

The order reads " Adjudged and Ordered that the judgment of the U.S. District Court-Eastern District of Pennsylvania, be hereby affirmed" .

AND NOW, the PETITIONER, NICHOLAS MAZUR, Pro se, must point out that the U.S. District Court-Eastern District of Penna. , adjudged the Petitioner's brief "(Appendix"F"), without the "Findings of Facts- Judicial Opinion 76-3" (Appendix "A").which was submitted to the original brief that was filed with the U.S. Court of Appeals, for the third circuit, on July 9,1980, for adjudication, ...filing done within time limits.

The resulting order(Appendix"E"), by the U.S. Court of Appeals, third circuit, obviously was made on the order(Appendix "F"), issued by the U.S. District Court-Eastern Pa., without considering the Judicial Opinion #76-3(Appendix "A").

Jurisdiction of the Court is invoked under Ttile 28 U.S.C.A. § 2101(a), (b) & (c), providing for a petition for writ of certiorari to the U.S. Supreme Court for adjudication of U.S. Court of Appeals-third circuit(Appendix "E").

REASONS FOR GRANTING THE PETITION

The Petitioner submits his "Findings of Facts- Judicial Opinion #76-3 by Attorney General Kane of the Department of Justice to Acting Secretary George Polakus, Penna. Department of Transportation" as the reason the Court should grant this Petition.

Also, due to the lack of similarities of evidence at the U.S. District Court-Eastern Pa. Level and that of evidence submitted for review at the U.S. Court of Appeals, third Circuit, there is no way the final judgment can be the same.

Furthermore, the U.S. Court of Appeals, for the Third Circuit, honored the Respondent's brief when they were under three defaults, and, it appears they honored the Respondents briefs, without reviewing the "Fining of Facts" (appendix "A") , which were filed within the time limits specified.

Conclusion

Petitioner respectfully requests that this Court grant this Petition and issue a writ of certiorari to the United States Court of Appeals for the Third Circuit

Dated: April 10,1981

Respectfully submitted,

Nicholas Mazur, Pro se/Petitioner

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM_____.
Case No._____

(U.S.C.O.A., 3rd ckt., Civil Case No. 80-1474)
(U.S. District Court-Eastern District, Case#C.A.79-4072).

CERTIFICATE OF SERVICE

I, Nicholas Mazur, Petitioner/Appellant, Pro se, hereby, certify, that true and correct copies of the foregoing "Petition forAppeal" has been forwarded, this date, by first class mail, prepaid postage, to:- (APPELLEES)

R. W. Cunliffe, Deputy Chief Counsel,
W. Williams, Chief Counsel,
R. Thornburgh, Governor of Pa.,
B. Raup, Asst Atty General,
Office of Chief Counsel
Dept. of Transportation
Commonwealth of Pa.
T& S Bldg.,
Harrisburg, Pa. 17120
and,:
R. Kirschner/J. Walters, Esq.,
1500 Walnut Street,
Phila., Pa. 19102

Signed By:
Nicholas Mazur
Nicholas Mazur-Appellant/Pro se
Date: April 2, 1981

Subscribed and sworn to before me
the 2 day of April 1981
Mamie M Schellhamer

Mamie M. Schellhamer
NOTARY PUBLIC
Allentown, Lehigh County, Pa.
My Commission Expires Jan. 7, 1983

IN THE UNITED STATES SUPREME COURT
OCTOBER Term_____

Case No._____

APPENDIX Index

Appendix "A"- - Judicial Opinion 76-3

Appendix "B"- - Arbitrary Decision dated 10/28/78.

Appendix "C"-- Honorable Discharge Certification 8/5/43 to 6/28/46.

Appendix "D"-- Honorable Discharge Certification 2/1/48 to 3/22/51.

Appendix "E"-- U.S. Court of Appeals-3rd Ckt Order dated 3/30/81

Appendix "F"-- U.S. District Court-Eastern District Order dated 3/4/80

APPENDIX "A"

JUDICIAL OPINION 76-3

FINDINGS OF FACTS

HEREWITH

DEPARTMENT OF JUSTICE
OFFICIAL OPINION No. 76-3

Opinion of the Attorney General -Kane
to
Hon. George S. Pulakos, Acting Secretary
of the Pennsylvania Department of Transportation.

APPENDIX "A"

Military Employment Preference

Words and phrases—"War"—"Soldier"—Undeclared armed conflict—Preference in Public Employment Act—Veterans—Seniority.

1. The term "soldier" within the purposes of Chapter 71 of the Military Code (the preference in Public Employment Act of May 22, 1945, P.L. 837) means one who has served in the armed forces of the United States or women's organization officially connected therewith during a war or period of armed conflict such as Vietnam, in which the United States is involved.

2. The term "war" within the context of section 7107 of the Military Code means either a formally declared war, or an undeclared armed conflict.

3. The Military Code, 51 Pa.C.S. §7107, requires that whenever a reduction in force is necessary in any public position and personnel are discharged according to seniority, the total amount of seniority of any soldier as defined by Chapter 71 of the Military Code shall be determined by adding his amount of seniority in the civil service or public works to his total years of service in the armed forces of the United States or any women's organization connected therewith, during any declared war or armed conflict in which the United States was involved.

Opinion of the Attorney General to Hon. George S. Pulakos, Acting Secretary of Transportation. Department of Justice, Official Opinion No. 76-3.

KANE, *Attorney General*, February 23, 1976—We have received a request for an opinion from your department interpreting the Preference in Public Employment Act of May 22, 1945, P.L. 837, 51 P.S. §§492.1, et seq., as amended.[1] Specifically, you have asked whether a former soldier in the armed forces of the United States, or member of any women's organization connected therewith, may take advantage of the additional seniority provision of the Act, 51 Pa.C.S. §7107, if he or she served during a time of armed conflict rather than receiving credit for additional seniority only if he served during a time of declared war. You are hereby advised that a former soldier in the armed forces of the United States, or member of any women's organization connected therewith, is entitled to the additional seniority as provided in section

1. This statute was codified by the Act of August 1, 1975, P.L. 216, 51 Pa.C.S. §§7101, et seq., without change, and became effective January 1, 1976.

7107 of the Military Code if he or she served either during a time of armed conflict or of declared war.

Section 7107 of the Military Code reads:

"Whenever a reduction in force is necessary in any public position . . . and personnel are discharged according to seniority, the number of years of service of any soldier shall be determined by adding his total years of service in the civil service or on public works to his total years of service as a member of the armed forces of the United States, or any women's organization officially connected therewith *during any war in which the United States engaged.*" (Emphasis supplied.)

There are two issues that must be resolved prior to the resolution of your question; what is the definition of "soldier" within the code, and what is meant by the term "war" as it is used in section 7107 of the Military Code.

The term "soldier" was defined in the original 1945 Act as a "person who served in the armed forces of the United States or in any women's organization officially connected therewith, during any war in which the United States engaged . . . and who has an honorable discharge from such service." In 1945, the Act was amended to insert the words "or armed conflict" after "during any war." In 1966, the act was amended specifically to include Vietnam veterans. Finally, the act was amended in 1972 so that the term "soldier" is currently defined as:

". . . a person who served in the armed forces of the United States, or in any women's organization officially connected therewith, during any war or armed conflict in which the United States engaged, or who so served or hereafter serves in the armed

forces of the United States, or in any women's organization officially connected therewith, since July 27, 1953, including service in Vietnam, and who has an honorable discharge from such service." 51 Pa.C.S. §7101.

It is clear that the term "soldier" within the meaning of the act, is one who has served or who shall serve in the armed forces or connected women's organizations during a war or armed conflict, such as Vietnam.

The question of what was intended by the word "war" in section 7107 of the Military Code, poses a more difficult question. Did the General Assembly intend to limit it to a declared war only, or did it intend to include undeclared wars and armed conflicts between the United States and other sovereigns?

General definitions of "war" are not very helpful. Black's Law Dictionary defines "war" as:

"Hostile contention by means of armed forces, carried on between nations, states, or rulers, or between parties of the same nation or state . . . [or] a contest by force between two or more nations, carried on for any purpose or armed conflict or sovereign powers or declared and open hostilities, or the state of nations among whom there is an interruption of pacific relations, and a general contention by force, authorized by the sovereign." Black's Law Dictionary 1754 (4th ed. 1968).

Such a definition is hopelessly broad and does not relate to the statute in question.

Several Pennsylvania decisions have construed the term "war" in order to decide whether it is limited to declared wars or includes armed conflicts between the United States and other nations. In

Beley v. Pennsylvania Mutual Life Insurance Co., 373 Pa. 231, 95 A.2d 202 (1953), and Harding v. Pennsylvania Mutual Life Insurance Co., 373 Pa. 220, 95 A.2d 221 (1953), the Pennsylvania Supreme Court considered the question of whether the beneficiary of a life insurance policy could collect double indemnity under a provision of the contract if the insured was killed in the armed forces during a time of war, where the insured was killed in the Korean conflict. In both cases, the court held that the action in Korea was not a war in the constitutional or legal sense of the word. The court implied that only a declared war could, in fact, be considered a war under the terms of the insurance contract. The rationale for the court's decision was that if the definition of "war" were expanded to include armed conflicts, then the courts would have no criteria to determine what was a war and what was merely shooting short of war. The court stated that:

"The existence or non-existence of a state of war is a political, not a judicial, question, and it is only if and when a formal declaration of war has been made by the political departments of the government that judicial cognizance may be taken thereof." Beley v. Pennsylvania Mutual Life Insurance Co., 373 Pa. 231, 237, 95 A.2d 202, 205 (1953).

In Thomas v. Metropolitan Life Insurance Co., 388 Pa. 499, 131 A.2d 600 (1957), the court again considered a claim by a life insurance beneficiary that he was entitled to an additional payment because the insured was killed in a war: the Korean conflict. The court stated that it was bound by its previous rulings in Beley and Harding supra and its

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insurance contract. However, the majority took pains to limit its decision to the particular facts of the case. Further, the court, in adopting the lower court's opinion, admitted that:

"'It becomes very clear then that hostilities between nations can become war whether solemnly declared or not. War of the perfect kind, solemnly declared, is called declared war. War of the imperfect kind that has not been baptized with the name by Congress is known as undeclared war.'" Thomas v. Metropolitan Life Insurance Co., 388 Pa. 499, 507, 131 A. 2d 600, 604 (1957).

The court in Thomas interpreted Beley and Harding as defining two types of war, declared and undeclared. However, when interpreting the language of an insurance contract, for the sake of clarity and uniformity, the court held that the definition should be limited to that of a declared war.

In Morgan Estate, 2 D. & C. 2d 480 (Luz., 1954), the question arose as to the construction of section 1(b) of the Wills Act of April 24, 1947 (now Act of June 30, 1972, P.L. 508, as amended, 20 Pa.C.S. §2501), which allows a minor in the armed services, in time of war, to dispose of his property by will. The court, after acknowledging the Beley and Harding cases, announced that it would not be bound by their limited definition of "war." Instead, the court chose to define "war" in its popular sense, that is to include both declared and undeclared conflicts. The court (in an opinion by Orphans' Court Judge Benjamin R. Jones, now Chief Justice of the Pennsylvania Supreme Court) distinguished the previous cases by noting that here it was dealing with an enactment of the legislature and not with a private insurance contract.

Finally, other States and the Federal courts have

considered the definition of "war." In Morrison v. United States, 316 F. Supp. 78 (M.D. Ga., 1970), the question arose as to whether the Vietnam conflict was a war within the definition of the Federal Tort Claims Act. The act proscribes recovery for "[a]ny claim arising out of the combatant activity of the military or naval forces or the Coast Guard during time of war." 28 U.S.C. §2680(j), June 25, 1948, 62 Stat. 984, as amended. The court unanimously held:

"While it may be true that a de jure state of war cannot exist without a formal declaration of war, a war is no less a war because it is undeclared." 316 F. Supp. 78, 79 (M.D. Ga., 1970)

Several courts of other States have held likewise: Langlas v. Iowa Life Insurance Co., 245 Iowa 713, 63 N.W. 2d 885 (1954); Western Reserve Life Insurance Co. v. Meadows, 152 Texas 559, 261 S.W. 2d 554 (1953); Stankus v. New York Life Insurance Co., 312 Mass. 366, 44 N.E. 2d 687 (1942); Stanbery v. Aetna Life Insurance Co., 26 N.J. Super. 498, 98 A. 2d 134 (1953).

The preceding cases, while not controlling, are helpful in our analysis. They acknowledge that war may be interpreted either narrowly or broadly, depending upon the construction which the framer intended. Surveying all of the cases,[2] Morgan Es-

2. Recently Commonwealth Court in Shank v. Everett Area School District No. 639 C.D. 1975 (Jan. 23, 1976), ruled that a man who volunteered for military service during the Vietnam conflict could not avail himself of section 1176 of the Public School Code of 1949, Act of March 10, 1949, P.L. 30, as amended, 24 P.S. §11-1176, which permits a public school employe a leave of absence if he volunteers for duty "in time of war or during a state of national emergency." The court held that during the Vietnam conflict there was no declaration of

tate is clearly the most applicable to the question at hand as it is a Pennsylvania case construing a legislative enactment.

The Statutory Construction Act of November 25, 1970, P.L. 707, 1 Pa.C.S. §1924, permits the title and preamble of a statute to be considered when interpreting a statute. The original act, when passed in 1945, was titled:

"Providing for and requiring in certain cases preference in appointments to public position or on public works for honorably discharged persons who served in the military or naval service during any war in which the United States engaged . . ." Act of May 22, 1945, P.L. 837.

The 1955 amendment to the act specifically provided for the preference in hiring and retention of veterans of armed conflicts and not merely those men and women who served in time of declared war. The act has been amended twice since 1955 and on both occasions the title has included the above phrase. The title of the act is evidence that the General Assembly intended that veterans of

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war or national emergency. The implication in Shank is that a conflict must be declared to be a war. However, Shank should not be viewed as controlling for several reasons. First, the court in Shank dealt with the Public School Code rather than Chapter 71 of the Military Code. This becomes even more significant when one realizes that the reasons for construing "war" to include an undeclared conflict in the Military Code do not exist in the Public School Code, i.e., the language that exists in the title to the Preference in Public Employment Act and the broad definition of the term "soldier" in the Code as are discussed later in the text of this opinion. Also, the court in Shank was never directly presented with, nor did it fully consider, the question of whether the Vietnam conflict fit within the definition of the word "war." Finally, the authorities previously cited in this opinion far outweigh the implications in Shank.

armed conflicts, as well as those of declared wars, should be given seniority preference.

Further evidence of the intent of the legislature can be had by substituting the definition of the term "soldier" for the word "soldier" in the particular provision. Substituting the definition, the statute reads:

'Whenever a reduction in force is necessary in any public position, or on public works of the Commonwealth . . . the number of years of service of any [person who served in the armed forces of the United States . . . during any war or armed conflict in which the United States engaged] shall be determined by adding his total years of service in the civil service or on public works to his total years of service as a member of the armed forces . . . during any war in which the United States engaged." 51 Pa.C.S. §7107.

If the term "war" in this section is construed to include only a declared war, then the section loses its meaning. The statute, when interpreted in the above manner, allows preference for those who served in the armed forces during time of war or armed conflict but only if they served during a declared war. Such an interpretation makes little sense. A far more reasonable construction would allow preference for those who served either during an armed conflict or time of declared war. When seeking the intent of the legislature, there is always a presumption that the General Assembly did not intend a result which is absurd or unreasonable: 1 Pa.C.S. §1922(1).

A further question concerns the duration of a war or armed conflict; that is when, for the purposes of the act, does a conflict begin and end? Decisions that have dealt with the beginning of a war or

armed conflict have concluded that a war or conflict begins with the opening of hostilities: Stinson v. New York Life Insurance Co., 167 F. 2d 233 (D.C. Cir., 1948); New York Life Insurance Co. v. Bennion, 158 F. 2d 260 (10th Cir., 1946); Beley v. Pennsylvania Mutual Life Insurance Co., 373 Pa. 231, 95 A. 2d 202 (1953); Darnall v. Day, 240 Iowa 665, 37 N.W. 2d 277 (1949). Therefore, a war or armed conflict begins when the United States becomes involved in the hostilities.

Several courts also have considered the issue of the end of a war or armed conflict. It is clear that a declared war ends upon the cessation of hostilities rather than the signing of a formal peace treaty and Pennsylvania cases have so held: Beley v. Pennsylvania Mutual Life Insurance Co., 373 Pa. 231, 95 A. 2d 202 (1953); Harding v. Pennsylvania Mutual Life Insurance Co., 171 Pa. Superior Ct. 236, 90 A. 2d 589 (1952), affirmed, 373 Pa. 270, 95 A. 2d 221 (1953). The courts of other jurisdictions are in accord: New York Life Insurance Co. v. Durham, 166 F. 2d 874 (10th Cir., 1948); Stinson v. New York Life Insurance Co., 167 F. 2d 233 (D.C. Cir., 1948); Langlas v. Iowa Life Insurance Co., 245 Iowa 713, 63 N.W. 2d 885 (1954). Further, although the preceding decisions dealt with declared wars, the language employed by the various courts makes it clear that they would apply the same logic to an undeclared conflict.

"[I]t is the common understanding that a war is no longer a war when the shooting is ended, regardless of official pronouncements . . . 'War in the practical and realistic sense in which it is commonly used, refers to the period of hostilities'.": Langlas v. Iowa Life Insurance Co., 245 Iowa 713, 720, 63 N.W. 2d 885, 889 (1954).

Such a decision only makes sense. If an official

pronouncement is not necessary to begin an undeclared war, as is necessary to begin a declared war, there is no reason why an official pronouncement should be relevant to end an undeclared conflict if it is irrelevant to the end of a declared war.

For the purposes of the Military Code, a declared war or armed conflict begins with the opening of hostilities and ends with the cessation of the action. Using the above criteria, it is possible to determine the exact dates, for the purposes of the code, of recent conflicts involving the United States. World War I began with the declaration of war on Germany on April 6, 1917, and ended on November 11, 1918, with the signing of the peace treaty. World War II began with the attack on Pearl Harbor on December 7, 1941, and ended with the signing of the peace treaty with Japan on September 2, 1945. The duration of the Korean conflict was from June 25, 1950, when the North Koreans attacked to July 27, 1953, which was the date of the cease fire at Panmunjom. The Vietnam hostilities began on August 5, 1964, with the Gulf of Tonkin incident and ended with the signing of the Paris Peace Accord on January 28, 1973.

When attempting to define "war," one must keep in mind a historical perspective. The original act was passed in 1945. At that time the term "war" had quite a different connotation than it does today. In 1945, World War II had just ended and World War I was still recent history. All large scale conflicts were formally declared wars. Today the large conflicts of recent memory, Korea and Vietnam, were not declared wars; but were waged on a scale and intensity approaching that of previously declared wars.

Finally, when examining the history of the act, it can be seen that the act was broadened several

times by amendments. The major amendments were in 1955, 1965 and 1972. The 1955 amendment expanded the title of the act to include armed conflicts and also expanded the definition of "soldier" to include those who served during armed conflicts as well as declared wars. The 1965 and 1972 amendments again broadened the definition of "soldier" to specifically include Vietnam veterans. In short, the General Assembly has acted to expand the coverage of the act to include each of the major undeclared armed conflicts in the last 25 years in which the United States was involved. In order to effect the intent of the General Assembly, and to be consistent with the evolution of the act, a broad interpretation should be given to the term "war" as it is used in section 7107 of the Military Code.

In conclusion, it is our opinion, and you are hereby advised, that section 7101 of the Military Code, 51 Pa.C.S. §7107, should be interpreted as granting to those veterans who meet the act's definition of "soldier" additional seniority, to the extent of the time they served in the armed forces of the United States during a declared war or armed conflict in which the United States was involved.

In re Summit House

Taxation—Real property taxes—Condominium—Uniformity of assessment in comparison with similar tenanted properties.

The requirement of the Pennsylvania Constitution, article VIII, section 1, for uniformity of taxation upon the same class of subjects requires that the assessment of the total number of units in a condominium be no greater than the assessment of a comparable building occupied by tenants, despite the argument that the market value of all of the units in the condominium is greater.

APPENDIX " B"

ARBITRARY DECISION , DATED -10/28/78

DEPARTMENT OF TRANSPORTATION
October 20, 1978

REPLY TO

U.S. Court of Appeals attention is requested Here!!

NOT.. 1723 354M 166122803
N. MAZUR
305 W. CARTER ST.,
SHENANDOAH, PA. 17976

PA
17901

NOTE: VIOLATION OF JUDICIAL "DOWNEY 76-3" DATED: 2/23/76-ATTY. GEN. & KANE OF U.S. SUPREME COURT. ACTION TOOK AWAY CIVIL/PUBLIC SERVICE TIME THAT SHOULD HAVE BEEN ADDED TO "SOLOMON'S HOLIDAY TIME"

Based on several grievances submitted by AFSCME, the Department of Transportation recently received an Arbitration decision concerning the implementation of furloughs and the calculation of seniority for employes affected by furloughs on June 30, 1978 and September 1, 1978. The arbitrator ruled that seniority credit for employes in the Transportation Construction Inspector 3 class was improperly calculated. This also affects Real Estate Specialist Supervisors and Real Estate Appraisers 3. This resulted from Executive Board classification changes which in turn created bargaining unit changes for employes in these classifications.

The arbitrator ruled that the bargaining unit seniority these employes earned prior to the classification changes should not have been credited toward the bargaining unit seniority earned after the classification and bargaining unit changes were made. As a result, the Department was directed to recompute seniority for these affected individuals and consequently to determine who should have been furloughed or bumped based on these new seniority calculations.

As a result, some employes were improperly furloughed or bumped. Correspondingly, some employes were improperly retained or bumped. You are one of the employes affected by this recalculation and were improperly retained. Therefore, in order to comply with the arbitrator's decision, we have been directed to reinstate another employe in your classification who was improperly furloughed. You regrettably, must be furloughed instead. This furlough will be effective at the close of business November 1, 1978. Your District Office will meet with you to answer any questions you may have as well as to discuss and provide counseling relative to your furlough status.

I sincerely regret that this action is necessary, but we, unfortunately, have no choice based on the arbitration decision. You have 20 days from the receipt of this letter to file an appeal with the

Referenced Pages 46,47,48,
and 49 of Appellant's
Brief dated 2/15/80.

Page 23
APPENDIX "B" P1 of 5

State Civil Service Commission regarding this action, if you choose to do so. An extract from the Civil Service Act explaining your appeal rights is attached.

Very truly yours,

John Harhigh, Director
Bureau of Personnel

Attachment

Referenced pages:46,47,48
and 49 of Appellant's
Brief, dated 2/15/80

APPENDIX "B"

Date Prepared 10-20-78

District Central Office

Class Title Real Estate Spec. III-1723

Parenthetical

Bargaining Unit B-1

"B" List (Bumping List, All Current Incumbents of Class Plus Those Eligible to Bump)

Name	Bargaining Unit Service Date	Action Taken/ Other Classes
Feinbey, M. P.	11-10-63	* RE-INSTATEMENT BY FEDERAL
Walter, J. H.	9-10-66	COURTS REQUESTED WOULD BE
Reefer, J. H.	6-5-69	AS FOLLOWS #
Shenk, F. T.	5-20-71	N. MAYER - R/W ADM. - 9-12-68
Romig, M. V.	9-15-71	J. H. REEFER 6-5-69
Gross, R. C.	1-22-72	F. T. SHENK 5-20-71
Lehr, D. W.	8-11-72	V. M ROMIG 9-15-71
Seitz, D.	9-6-72	R. C. GROSS 1-22-72
[illegible]ur, N.	7-27-75	D. W. LEHR 8-11-72
[illegible] R. D.	3-3-77	D. R. PAUL 3-3-77

U.S. Court of Appeals attention is called HERE!!!

* * THE REVISED STANDING LISTED ABOVE, WOULD BE APPROXIMATELY THE SENIORITY STANDINGS IF U.S. SUPREME COURT MAKES THE STATE OF Pa. HONOR THE JUDICIAL OPINION #76-3, 2/23/76, 73 D&C, P74 to P75.

Referenced Pages: 46,47,48 and 49, of Appellant's brief dated 2/15/80.

APPENDIX "B" P. 25

10/20/78

ARBITRATION AWARD FACT SHEET

I. Seniority Dates

A. Those employes improperly furloughed who are returning to work will have seniority credited as if they never left.

B. Those eligible to return but who do not accept reemployment will have seniority credited retroactive from November 3, 1978 to their furlough date. If did not return October 23, 1978, show as LWOP but still give seniority credit.

C. Those eligible to return but do not because they would be furloughed on November 8, 1978 will be shown as LWOP from October 23, 1978 to November 8, 1978, furloughed at close of business November 8, 1978 and will have seniority credit to November 8, 1978.

D. Employes improperly bumped are restored to their proper levels effective October 23, 1978. However, their seniority is to be credited toward what should have been their proper class and/or bargaining unit retroactive to their original "improper" bumping date (July 1, 1978 or September 2, 1978). This applies to both downward and upward restoration.

II. Recall Provisions

A. Those employes furloughed on November 1, 1978 will have three years of recall rights starting from the date they should have been furloughed, either July 1, 1978 or September 2, 1978. They will be merged with persons on recall lists from those dates. For recall purposes only, seniority credit earned after the furlough date will be subtracted so that their relative seniority with others furloughed on either July 1, 1978 or September 2, 1978 remains consistant.

B. Employes improperly furloughed who choose not to return to work lose recall rights because they refused recall.

C. Employes improperly furloughed, who could come back, but do not because they will be furloughed on November 8, 1978 are treated as if furloughed on November 8, 1978.

D. Recall rights for employes who are bumped to lower levels on October 23, 1978 begin on the date they should have been bumped, either July 1, 1978 or September 2, 1978. For example, a Trans. Const. Insp. 3 who was bumped to Trans. Const. Insp. 2 on October 23, 1978, but who should have bumped on September 2, 1978, will have recall rights to Trans. Const. Insp. 3 which begin retroactive to September 2, 1978 and continue for three years.

Referenced Pages: 46,47, 48, and 49, of Appellant's brief dated 2/15/80.

APPENDIX "B" P. 26

HISTORICAL CLASS/SENIORITY CHANGES, GENERATED FROM APPELLEES ACTIONS ON THE APPELLANT STATUS

Ref. no.	Class Holding	Time/Date In Effect	Seniority Class Standing	By What Directive or Achievement	Seniority Time Application Civil Service (Plus) Military (As of 8/4/80)	
1	R.E.SIV	4-10-77	#1 of 4	Civil Service	8YRS.4mos/3/days	3Yrs/7mos/10Days
2.	R/W ADM	8-29-77	#4 of 4	PennDot Ltr.8/29/77	none	3Yrs/7mos/10Days
3.	R.E.S.III	2-6-78	#6 of 11	PennDot Ltr.2/16/78	4Yrs/7mos/26days	2Yrs/3mos/16Days
4.	R.E.S.III	10-20-78	#9 of 11	Gov. Ofc.Arb. Case 10/20/78	none	2yrs.3mos/16Days
5..	R/W Adm or R.E.S.IV	8-4-80 U.S.Ct.of Appeals	#1 of 3	U.S. Court of Appeals hearing -8/4/80	8Yrs/4mos/3Days	3Yrs/7mos/10Days.

27

FLOW PROCESS CHANGE CHART FROM CLASS TO CLASS PER APPELLEES DIRECTIVES

Original Appellant'sCLASS achieved through Civil Service was R.E.S.IV.

Step(s)	Class		By What Directive and/or Achievement
1	R.E.S. IV		Civil Service Tests
2	R/W/ Adm.I to R.E.SIII and/or (Pay grade Change)	R.E.S.III(Suprv.) (No pay grade change)	PennDot Ltr. 3/29/77
4	R.E.S.III Loss of Civil Service Time	R.E.S.III(Suprv.) (no changes)	PennDot Ltr. 5/3/77 and AFSCME Ltr. 5/5/77. and. Gov. Ofc.Arb. Case 10/20/78

APPENDIX "B"

Legal Aug. Civil Service Regulations Pa. Appellant's Brief

APPENDIX "C"

HONORABLE DISCHARGE : 8/5/43 to 6/28/46

APPENDIX "C"

APPENDIX "D"

HONORABLE DISCHARGE: 2/1/48 to 3/22/51

Honorable Discharge

FIDELI CERTA MERCES

from the Armed Forces of the United States of America

This is to certify that

NICOLAS KAZIR

was Honorably Discharged from the

United States Marine Corps

on the 22d day of March 1921. This certificate is awarded as a testimonial of Honest and Faithful Service

EMILY SCHULTZ.

Captain, U. S. Marine Corps Reserve

APPENDIX "D"

APPENDIX "E"

United States Court of Appeals Order-dated 3/30/81

APPENDIX "E" - Ehrlich

OFFICE OF THE CLERK
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
21400 UNITED STATES COURTHOUSE
INDEPENDENCE MALL WEST
601 MARKET STREET
PHILADELPHIA 19106

SALLY MRVOS
THOMAS F. QUINN
CLERK

TELEPHONE
215-597-2995

March 30, 1981

Mr. Nicholas Mazur
819 N. 21st Street
Allentown, PA 18104

Richard Kirschner, Esquire
Kirschner, Walters & Willig
1500 Walnut Street
Philadelphia, PA 19102

Frank A. Fisher, Jr., Esquire
Assistant Attorney General
Commonwealth of Penna.
Dept. of Transportation
Transportation and Safety Building
Harrisburg, PA 17120

Barbara Raup, Esquire
Assistant Attorney General
Civil Service Commission
P.O. Box 569
Harrisburg, PA 17120

Re: Mazur, Nicholas, Appellant vs. Commonwealth of Penna., et al.
No. 80-1474

Dear Sirs and Madam:

Enclosed herewith is conformed copy of judgment-order entered by the Court today in the above-entitled case.

Very truly yours,

Sally Mrvos

Clerk

Enclosure

bjr

APPENDIX "B" - Sheet 242

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

NO. 80-1474

NICHOLAS MAZUR,
Appellant

v.

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,
CIVIL SERVICE COMMISSION,
GOVERNOR'S ADMINISTRATION OFFICE, and
AMERICAN FEDERATION OF STATE, COUNTY
AND MUNICIPAL EMPLOYEES UNION (AFSCME)

Appeal from the United States District Court
for the Eastern District of Pennsylvania
C. A. No. 79-4072

Submitted Under Third Circuit Rule 12(6)
March 24, 1981

Before: ADAMS and GARTH, Circuit Judges, and
DUMBAULD, District Judge*

JUDGMENT ORDER

After consideration of all contentions raised by appellant, it is

ADJUDGED AND ORDERED that the judgment of the district court be and is hereby affirmed.

Each side to bear its own costs.

BY THE COURT,

Circuit Judge

ATTEST:

Sally Privos, Clerk

DATED: MAR 30 1981

* Honorable Edward Dumbauld, United States District Court for the Western District of Pennsylvania, sitting by designation.

APPENDIX "F"

UNITED STATES DISTRICT COURT_EASTERN DISTRICT ORDER
dated March 4, 1980

APPENDIX "F" Sheet 1 of 3

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

NICHOLAS MAZUR	:	
v.	:	
COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF TRANSPORTATION, CIVIL SERVICE COMMISSION, GOVERNOR'S ADMINISTRATION OFFICE and AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES (AFSCME)	:	CIVIL ACTION NO. 79-4072

FILED

MEMORANDUM AND ORDER

JVB

TROUTMAN, J. MARCH 4, 1980

Plaintiff, a former real estate administrator with the Pennsylvania Department of Transportation, commenced this pro se action to challenge the failure of the Pennsylvania Supreme Court to consider his allegations that defendants denied him rights guaranteed by the Pennsylvania Public Employee Relations Act of 1970, 43 P.S. §1101.101 et seq. (Act 195), various provisions of the Pennsylvania Civil Service Act of 1941, 71 P.S. §741.1 et seq., and the Pennsylvania law giving prefarences in employment to veterans, 51 Pa. Cons. Stat. Ann. §7101 et seq. Initially plaintiff filed charges of unfair labor practices against defendants with the Pennsylvania Labor Relations Board pursuant to Act 195. The Board, a Commonwealth administrative agency charged with the duty of enforcing the provisions of Act 195, dismissed the charges on January 29, 1979. Plaintiff then appealed to the Commonwealth Court of Pennsylvania, which construed the appeal as a petition for review in the nature of an appeal from the State Civil Service Commission. Relying upon Pa. R.A.P. 1512(a)(1),[1] the

[1] This rule reads: "Except as otherwise prescribed by Subdivision (b) of this rule: (1) A petition for review of a quasi judicial order, or an order appealable under 42 Pa.C.S.§763(b) (awards of arbitrators) or under any other provision of law, shall be filed with the prothonotary of the appellate court within 30 days after the entry of the order." Plaintiff conceded that he did not comply with this rule, which the Court may not extend. Pa.R.A.P. 105(b).

Commonwealth Court dismissed plaintiff's petition as untimely. Plaintiff then filed a "motion to put aside the perfunctory defense ruling by the Court and respondents, and call for a summary judgment", which the Commonwealth Court dismissed in late April. Two weeks later plaintiff filed with the Pennsylvania Supreme Court a petition for allowance of appeal from the decision of the Commonwealth Court. On October 22, 1979, the Supreme Court denied plaintiff's petition. Plaintiff now seeks review in federal court of the state court determinations.

Plaintiff predicates jurisdiction in federal court upon Section 204 of the Appellate Court Jurisdiction Act of 1970, 43 Pa. Con. Stat. Ann. §211.204.[2] Apparently plaintiff views this forum as an appellate court to which he may appeal the refusal of the Pennsylvania administrative agencies as well as the Commonwealth and Supreme Courts of Pennsylvania to grant him relief. This Pennsylvania statute does not, and indeed cannot, create jurisdiction in federal court, for "federal courts possess limited jurisdiction, conferred only as the Constitution and Congress direct". Holman v. Carpenter Technology Corp., ____ F. Supp. ____, ____ (E.D. Pa. 1980). Due regard for the "rightful independence" of state governments requires federal courts to confine their

---

[2] The Judiciary Act Repealer Act of 1978, Act of April 28, 1978, P.L. 202, No. 53, repealed this Act. However, Section 724 of the Judicial Code, 42 Pa. Con. Stat. Ann. §724, substantially reenacts the provision, which now reads:

> Final orders of the Superior Court and final orders of the Commonwealth Court not appealable under section 723 ... may be reviewed by the Supreme Court upon allowance of appeal by any two justices of the Supreme Court upon petition of any party to the matter....
>
> If an appeal is improvidently taken to the Supreme Court under section 723 in a case where the proper mode of review is by petition for allowance of appeal under this section, this alone shall not be a ground for dismissal, but the papers whereon the appeal was taken shall be regarded and acted on as a petition for allowance of appeal and as if duly filed at the time the appeal was taken.

own jurisdiction to the precise limits established thereby. Victory Carriers, Inc. v. Law, 404 U.S. 202, 212 (1971).

Plaintiff's attempts to fit within these strictures remain unsuccessful. Plaintiff can avail himself of neither the Labor Management Relations Act, 29 U.S.C.§185, nor the Labor Management Reporting and Disclosure Act, 29 U.S.C.§401, for both acts specifically exclude from their purview public employees like plaintiff. See 29 U.S.C. §152(2) and §402(e).[3]

As recently noted in this district, "pro se pleadings should be approached with liberality. When an individual either cannot afford the services of an attorney or chooses to prosecute his claim himself ... courts must proceed painstakingly in an effort to discern the nature of plaintiff's claim and to insure that his lack of familiarity with legal proceedings does not result in his forfeiting a potentially valid claim. On the other hand, a judge may not become the surrogate attorney for a party, even one who is proceeding pro se. A pro se plaintiff must abide by the Federal Rules of Civil Procedure and when confronted by motions to dismiss must articulate reasons why the motions should not be granted". Tilli v. Capabianco, No. 79-931, slip op. at 1-2 (E.D. Pa. January 28, 1980). Accordingly, defendants' motion to dismiss will be granted.

---

[3] These provisions, respectively, read:

The term "employer" includes any person acting as an agent of an employer, directly or indirectly, but shall not include the United States ... or any State ....

"Employer" means any employer ... but does not include the United States ... or any State ....

FILED
JUN 1 1981
ALEXANDER L. STEVAS,
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1981

No. 80-1729

NICHOLAS MAZUR, Petitioner

v.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION
CIVIL SERVICE COMMISSION
GOVERNOR'S ADMINISTRATIVE OFFICE
AND AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES
(AFSCME), Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR
THE THIRD CIRCUIT

BRIEF FOR COMMONWEALTH RESPONDENTS IN OPPOSITION

Barbara Raup
Chief Counsel
Pennsylvania Civil Service Commission

Robert W. Cunliffe
Deputy to Chief Counsel
Pennsylvania Department of Transportation

302 South Office Building
Commonwealth Avenue
Harrisburg, Pa. 17120
(717)-783-3029

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1981

No. 80-1729

NICHOLAS MAZUR, Petitioner

v.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION
CIVIL SERVICE COMMISSION
GOVERNOR'S ADMINISTRATIVE OFFICE
AND AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES
(AFSCME), Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR
THE THIRD CIRCUIT

QUESTIONS PRESENTED

1. Did the Court of Appeals for the third circuit commit legal error in affirming the District Court's judgment of lack of jurisdiction.

CONSTITUTIONAL PROVISIONS INVOLVED

1. Federal Constitution (In addition to the provisions cited by Petitioner).

AMENDMENT XI

The Judicial power of the United Staes shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or subjects of any Foreign State.

STATEMENT

This appeal involves a lawsuit initiated in the United States District Court for the Eastern District of Pennsylvania by the Appellant, Nicholas Mazur, on his own behalf, on November 9, 1979. That action attempted to challenge the failure of the Pennsylvania Supreme Court to consider his allegations that the Respondents had denied him rights guaranteed by: the Pennsylvania

Public Employee Relations Act of 1970, 43 P.S. §1101.101 et seq. (Act 195); various provisions of the Pennsylvania Civil Service Act of 1941, 71 P.S. s741.1 et seq.; and, the Pennsylvania law giving preferences in employment to veterans, 51 Pa. C.S. §§7101 et seq.

All of the Respondents filed Motions to Dismiss including assertions that the District Court did not have jurisdiction over the matter.

On March 4, 1980 Judge Troutman issued his Opinion and Order finding that the District Court had no jurisdiction over the matter and he dismissed Mazur's complaint. Mazur appealed this order to the Court of Appeals for the Third Circuit. The Third Circuit affirmed the lower court's judgment, without argument by Order dated March 30, 1981.

Mazur then filed the present Petition with this Court.

ARGUMENT

1. The issue in the present case is a narrow one concerning the jurisdictional question which the District Court addressed. The Petitioner does not address this matter in his Petition but rather argues the merits of his claims, which were rejected by both the Administrative and Judicial forums of Pennsylvania.

The Petitioner has not raised any arguments concerning why this case merits the extraordinary review of the Court. It is the firm contention of the Commonwealth Respondents that nothing about this case merits any review by this Court. The lower courts here have not even arguably failed to correctly construe any decision of this Court. The Petitioner has not cited, nor do the Respondents believe, that there is any conflict

among the circuits on this narrow jurisdictional issue.

In sum, there are present none of the traditional standards which this Court requires in order to exert the exceptional jurisdictional power of Certiorari.

The Commonwealth Repondents assert that the only issue which is properly able to be argued before this Court is whether the District Court erred in dismissing Mazur's complaint for want of jurisdiction. It must, therefore, be noted that although the Commonwealth Respondents are aware of both Mazur's pro se status, and the Court's duty to avoid injustice by liberally construing the pleadings because of his status, parts of his Petition are simply not properly before this Court. The Commonwealth Respondents argue that any part of his Petition not addressing the issue

of the District Court's jurisdiction is not relevant, and not properly a matter for this Court's consideration.

It is the Commonwealth Respondents' contention that the determination made by Judge Troutman was entirely proper and that, not only did Mazur not cite any proper jurisdictional statutes as required by F.R.C.P. 8(a)(1), but also that, there simply is no statute giving the District Court subject matter jurisdiction over Mazur's complaint.

Mazur in his complaint cited a Pennsylvania statute, Section 204 of the Appellate Court Jurisdiction Act of 1970 (17 P.S. §211.204), as the District Court's jurisdictional basis. The District Court properly stated that this Act, which had been repealed and then substantially reenacted by Section 724 of Pennsylvania Judicial Code, 42 Pa. C.S. §724, neither attempted to nor

could provide the Federal District Court jurisdiction of any kind.

This Court has often stated that federal courts possess limited jurisdiction, conferred only as the Constitution and Congress direct. Owen Equipment & Erection Co. v. Kroger, 437 U.S. 365 (1978). In order to protect the "rightful independence" of state governments, the federal courts are required to confine their own jurisdiction to the precise limits that federal statutes have defined. Victory Carriers, Inc. v. Law, 404 U.S. 202 (1971).

There are simply no statutory grounds for the District Court in this matter.

The District Court reviewed all of the arguably relevant statutes and they simply do not confer any jurisdiction upon the District Court. Mazur now has attempted to cite both the Labor

Management Relations Act, 29 U.S.C. §§141 et seq. and the Labor Management Reporting and Disclosure Act, 29 U.S.C. §§401 et seq. The District Court correctly found both of these acts expressly exclude public employees from their coverage.

Respondents, Pennsylvania Department of Transportation, Civil Service Commission, and the Governor's Office of Budget and Administration are cabinet-level departments through which the executive branch of the Commonwealth of Pennsylvania carries out its duties and responsibilities. Administrative Code of 1929, Act of April 9, 1929, P.L. 177, art. 11, §201, 71 P.S. §61, as amended. As such the language of 29 U.S.C. §152(2) and §402(e) excludes them from the definition of "employer." The Federal Courts have recognized this exemption. Crilly v. Southeastern Pennsylvania Transportation Authority, 529 F.2d 1355 (3rd Cir. 1976). See also Stevens v. Carey, 483 F.2d 188 (7th Cir. 1973).

The District Court could not find any other arguable statutory basis. The Commonwealth Respondents, after thorough research, are convinced that no other statutory jurisdictional basis exists.

Commonwealth Repondents did raise before the District Court and the Court of Appeals for the Third Circuit the issue of the bar of the Eleventh Amendment to this case, and properly reassert that defense. That is, should this Court find a jurisdictional basis for this action it must be viewed in light of the Eleventh Amendment.

The Eleventh Amendment provides:

> "The judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any foreign State."

It has been uniformly held that an "unconsenting state is immune from suits brought

in federal courts by her own citizens as well as by citizens of another state." Edelman v. Jordan, 415 U.S. 651, 662, 663 (1974); Employees v. Department of Public Health and Welfare, 411 U.S. 279, 280 (1973).

The Eleventh Amendment to the United States Constitution is a grant and recognition of the doctrine of the state's sovereign immunity. The history and tradition of the Eleventh Amendment indicate that this sovereignty creates a barrier by which a federal court is not competent to render judgment against a nonconsenting state.

In addition, the Amendment bars suits against agencies of the states. Alabama v. Pugh, 438 U.S. 781 (1978). Appellees, Pennsylvania Civil Service Commission, Department of Transportation, and the Governor's Office of Budget and Administration are cabinet-level departments through which the executive branch of the Commonwealth of Pennsylvania

carries out its duties and responsibilities. Administrative Code of 1929, Act of April 9, 1929, P.L. 177, art. 11 §201, 71 P.S. §61, as amended. Consequently, this action against Respondents Pennsylvania Civil Service Commission, Department of Transportation and the Governor's Office of Budget and Administration must be dismissed for lack of jurisdiction, Alabama v. Pugh, supra; Edelman v. Jordan, supra.

Finally, the Petitioner has argued that the District Court had a duty to be a "surrogate attorney" for him since he is acting pro se. There is no such duty upon the District Court. However, as Judge Troutman noted in his opinion, the District Court must proceed carefully to insure that the pro se litigant will not be deprived of rights merely because of inexpertly drawn pleadings. See Gibbs v. Burke, 337 U.S. 773 (1949). It is clear that the District Court not only construed Mazur's complaint liberally, as

required, but went well beyond the complaint to determine if any jurisdictional basis existed.

Not only is there no legal precedent for requiring the District Court to be a "surrogate attorney" for pro se litigants but also this is neither theoretically sound nor practically possible. While it may be unfortunate that some individuals cannot afford the services of an attorney, the Court cannot both represent the pro se and decide the case in an unbiased manner. This is not the historical role of a Judge and certainly not the role of the District Court Judge in this Federal System.

However, even if the Judge could so operate, theoretically, the workload of any Judge in the Federal System, in fact, is simply too great to require that he not only sit in judgment but also represent pro se litigants. Such a requirement

has no relationship to reality or the traditional role of the Judge.

CONCLUSION

The Commonwealth Respondents assert that there do not exist any extraordinary reasons for this Court to extend its discretionary jurisdiction of Certiorari. For the foregoing reasons, this petition for a writ of certiorari should be denied.

Respectfully submitted,

Barbara Raup

Barbara Raup
Chief Counsel
Pennsylvania Civil Service Commission

Robert W. Cunliffe
Deputy to Chief Counsel
Office of Chief Counsel
Pennsylvania Department of Transportation

302 South Office Building
Commonwealth Avenue
Harrisburg, Pa. 17120

DISTRIBUTED JUN 4 1981

Original Copy

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1981

JUN 18 PAGE 3

No. 80-1729

RECEIVED
JUN 4 1981
OFFICE OF THE CLERK
SUPREME COURT, U.S.

NICHOLAS MAZUR, PETITIONER

v.

COMMONWEALTH OF PENNSYLVANIA, Et al:-
DEPARTMENT OF TRANSPORTATION
CIVIL SERVICE COMMISSION
GOVERNOR'S ADMINISTRATION OFFICE
AND AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES
(AFSCME), RESPONDENTS.

ON PETIITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR
THE THIRD CIRCUIT

BRIEF FOR THE PETITIONER IN OPPOSITION

by Nicholas Mazur

NICHOLAS MAZUR, Petitioner/Pro se
819 N. 21st Street,
Allentown, Pa. 18104
215-433-1587

June 1, 1981

Alexander L. Stevas, Chief Clerk
Office of the Clerk
1 First Street, NE
U.S. Supreme Court
Washington , D.C. 20543

Re: No. 80-1729
NICHOLAS MAZUR, Petitioner
v. Commonwealth of Pennsylvania
Department of Transportation
Pa. Civil Service Commission
Governor's Administrative Office
AND American Federation of State,
County, & municipal Employees Union,
(AFSCME), Respondents.

Dear Mr Stevas:

Enclosed for filing please find original and ten(10) copies of the Petitioner's brief in opposition to the Petition for a Writ of Certiorari submitted by the Respondents in the above captioned matter. Also enclosed is a certificate of service, page 3, and mailing to all parties concerned.

Thanking you , in advance, for your cooperation, I remain.

Very truly yours,

NICHOLAS MAZUR,
Petitioner/Pro se
819 N. 21st Street,
Allentown,Pa. 18104
215-433-1587

cc:Barbara Raup,Esq.
Robert W. Cunliffe, Esq.
Richard Lirschner, Esq.
Gov. R. Thornburgh, Esq.
Ms Sally Mrvos,Chief Clerk(U.S. Ct. of Appeals)

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1981

QUESTIONS

1. Does the Court see a conflict of the Respondents citation of Amendemnt XI, as compared to Petitioner's citation of ;- (a). Amendment 5 -"Substantive Due Process" and "Discrimination" (p1162.1163); (b). Amendment 6-"Right to Trial by Jury"(p-1200); (c). Amendment 14 - Section 1,(p-1303; 1310); and Article III, Section 2,(p-684)?

2. Does the Court see an " Invasion of the Petitioner's Constitutional Rights"(Art. III, Section 2, p-684)?

3. Does the Court see a violation of "Substantive Due Process" (Amendment 5)?

4. Does the Court see evidence of " Discrimination"(Amendment 5, p-1162,1163)?

5. What extraordinary excuse has the Respondents given to grant them an extension of time to file their response?

6. Is the Court aware of the devious means by which the Respondents have filed their "Request for Extension of Time" to the Court, without serving said request to the Petitioner?

7. Can a lower court decison remain the same upon "finding of facts" submitted to the higher Court?

IN THE
SUPREME COURT OF THE UNITED STATES
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QUESTION(s) (cont'd.)

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8 Has the Court asked the Respondents for "Certification of Service" of all papers sent to the Petitioner?

9. Considering the foregoing questions.... Does the Court see fit to honor the Petitioner's petition for Writ of Certiorari, to reject Respondent's actions to date , and arrive at a decision to grant the Petitioner judicial relief of his grievances.

In The
Supreme Court of the United States
October Term, 1981

No. 80-1729

PARTIES

CERTIFICATE OF SERVICE

I, NICHOLAS MAZUR, Pro se/Petitioner, hereby , certify that true and correct copies of the foregoing "Petition for Writ of Certiorari, in Opposition " has been forwarded , this date by first class mail, pre-paid postage to:

Commonwealth of Pennsylvania, Et al:-
Barbara Raup, Chief Cpunsel- Penna. Civil Service Commission
Robert W. Cunliffe, Dep. to Chief Counsel, PennDot.
302 S. Office Bldg., Harrisburg, Pa. 17120
and
Richard Kirschner, Esq. (AFSCME Repres.)
Kirschner , Walters, & Wittig
1426 Walnut Street,
Phila.,Pa. 19102

June 1- 1981
Patricia M. Zangl
NOTARY PUBLIC
Allentown, Lehigh County, Pa.
My Commission Expires July 3, 1983

Signed by:
Nicholas Mazur
Nicholas Mazur, Petitioner
819 N. 21st Street,
Allentown, Pa. 18104
215-433-1587

Date: June 1, 1981

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1981

Case No. 80-1729

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OCTOBER TERM 1981
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STATEMENT

This petition involves the Petitioner's supporting data to Rescind/Quash all of the Respondents filing action(s) to date, due to a default , by the Respondents, and the Court, of procedural adherence to the Supreme Court Rule(s):16;24 and 33.

Also, the Petitioner submittance , herein, of supportive data giving the Court jurisdiction to review and grant judicial relief to the Petitioner.

ARGUMENT

The Respondents point out that the issue, presented by the Petitioner, is a narrow one concerning the jurisdictional question, which the District Court addressed.

However , the District Court had not the " Findings of Facts"...Appendix "A" of original brief; to review and consider in its' decision.

The U.S. Court of Appeals-Third Circuit , by confirming the District Court's Order _ without comment , on the "Findings of Facts" , on the consideration of data, therein, is questionable.

Therefore , the Petitioner, supports his Argument(s) as

Argumet(cont'd.)

follows:

I. ARTICLE III, Section 2 (p-684):

Wherein, the litigant claims an actual , or threatened invasion of his Constitutional Rights by the enforcement of some act of authority , usually an act of Congress, or a state legislature, and asks for judicial relief. The clause furnishes the principal textual basis for the implied power of judicial review of the Constitutionality of legislation and other official Acts [2]. Supra pp 669-676; I Stat. 73 & Supra pp 675-676; and Textile Workers Union v. Learoln Mills,355 U.S. 448(1957).

II. Article III, Sec. 2, P-690: Civil Rights Act Jurisdiction:-

Granting the Court to hear suits challenging the deprivation, under color of state law(s), or customs of any right, privilege, or immunity secured by the Constitution as by any act of Congress providing for equal rights [8]. (80 28 U.S.C. Sec 1343(3) ...The cause of Action to which the jurisdiction grant applies is 42 U.S.C. Sec. 1983, making liable and subject to the redress of any person who, acting under color of State law, deprives any person of any rights, privileges, as immunities secured by the Constitution and laws, statutes :-

Argument(s) (cont'd.)

III(cont'd.):-

view". Were Due porcess merely a procedural safeguard it would fail to reach those situations where the deprivation of life, liberty, or propertywas accomplished by legislation, which by operating, in the future, could, given even the faiest possible procedure in application to individuals. nevertheless destroy the enjoyment of all three...Thus the guarantee of due process, though having their roots in Magna Carta's "per legem terrue" and considered as procedural safeguards "Against executive usurpation and tyranny" have in this country " become bulwarks also against arbitrary legislation, which the Respondents have done , in the past, to prevent the Petitiojer his "Rights".

IV. AMENDMENT 14, Section 1, (p-1303):-

All persons born or naturalized in the U.S., and subject to jurisdiction thereof, are citizens of the U.S. and the State wherein they reside. No State shall make or enforce any law, which shall abridge the privilege or immunities of the citizens of the U.S. nor shall any State deprive any person of life, liberty(s), or property , without due process of law, nor deny to any person within its' jurisdiction the equal protection of the laws.

Argument(s) (cont'd.)

II (cont'd.):-Lynch v. Household Finance Corp. 405 U.S. 538(1972); Adickes v. Krass & Co. 398 U.S. 144(1970); Monroe v. Pape, 365 U.S. 167(1961); King v. Smith, 392 U.S. 309,312 n.3 (1968); Rosado v. Wyman, 397 U.S. 397, 405 n.7(1970); McNeese v. Board of Education, 373 U.S. 668(;963); Damico v. California, 339 U.S. 416(1987); Carter v.Stanton, 405 U.S. 669(1972 Askew v. Hargrave, 401 U.S. 476(1971). Wherein, the litigant exhausted his state remedies before bringing action [28].

Osburn v. Bank of U.S., 9 Wheat.(22 U.S.) 738, 822-828(1824); Silver v. Lousiville N.RR . Co.,213 U.S. 175(1909)., Wherein, Court may decide any issue necessary to the disposition of a case, not withstanding that other non=federal questions of fact and law may be involved, that other non-federal questions of fact and law may be involved , therein.

III. AMENDMENT 5- " Substantive Due Process":-

Where, Justice Harlan, in "Pol v. Ullman" ...367 U.S. 497, 540, 541,(1961). Hurtado v. California, 110, U.S. 516,532(1884). Supra ppl140-1141 and infra p-1170, is treated infra pp-1310-1332. _ observed that one view of due-process, ably and insistently argued... sought to, limit the provision to a guarantee of procedural fairness, but continued a broader concept than "that

ARGUMENTS(cont'd.)

V. AMENDMENT 14, P-1310:-

The Fourteenth amendment" operates to extend...the same protection against "arbitrary" State legislation, , as practiced by the Respondents, affecting life, liberty , and property, as is offered by the " Fifth Amendment"...Hibben v. Smith, 191 U.S. 310, 325(1903); Scott v. Sandford, 19 How(60 U.S.) 393,409 (1837);... wherein, the legislature " only in the narrowest sense(which Respondent calls Petitioner's issue), must provide due process for the enforcement of the Law"

VI. Amendment 5, (p-1162-1163):- "DISCRIMIANTION"-

Unlike the "Fourteenth Amendment", the Fifth Amendment, allows the Court to assure "Discrimination" , if gross enough is equivalent to confiscation and subject under the Fifth Amendment to challenge and annulment... Stewart Machine Co. v.Davis, 301 U.S. 548, 585(1937); Also, Currin v. Wallace 306 U.S. 1, 13-14(1939)....Chief Justice Taft observed(AmendV p-1163)... that due process and equal protection clauses are associated... "Due Process" tends to secure equality of law in the sense that it makes a reuired minimum of protection for every one's right of life, liberty, and property, which the Congress or the

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_____)

ARGUMENTS(cont'd.)

VI (cont'd.):- Legislature may not withold .

The Whole system of Law is predicated on the general fundamental principle of equality of the application of the law...Bolling v. Sharpe, ; Also, Brown v. Board of Education; 347 U.S. 483(1954).

VII. Amendment 6, P-1201" Right to Trial by Impartial Jury" Which the Courts have denied the Petitioner this right, to date. ...Wherein the truth of every accusation must be confirmed by the unanimous suffrage of twelve of his equals and neighbors indifferently chosen and superior to all suspicion....In re Oliver 333 U.S. 257, 266-270(1948); Estes v. Texas, 381 U.S. 532,538 -539(1965)., 4 W. Blackstine, Commentaries on the laws of England, T. Cosley, ed.(Chicago); 4th ed.(1899) 349-350.

CONCLUSION

Petitioner repectfully requests that this Court grant this Petitioner the judicial releif under his Petiton for a Writ of Certiorari to the United States Couet of Appeals for the Third Circuit.

Dated: May 31, 1981.

Respectfully submitted:

Nicholas Mazur

Nicholas Mazur, Petitioner/Pro se.